

MPEP 1893.03(d) "Unity of Invention [R-1]," states that "Examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in national stage (filed under 35 U.S.C. 371) applications." The instant application was filed under 35 U.S.C. § 371 and not 35 U.S.C. § 111; therefore, restriction practice under 35 U.S.C. § 121 does not apply. Rather, the standards that relate to Unity of Invention are applicable.

Further, MPEP 1895.01(4) "UNITY OF INVENTION" states that "[r]estriction practice under 35 U.S.C. 121, as it applies to national applications submitted under 35 U.S.C. 111(a), is not applicable to either international or national stage application." This application is a national stage application and was not filed under 35 U.S.C. § 111. Therefore, restriction practice should not be applied.

Unity of Invention was established during the International Stage of this application and the finding of Unity is binding during subsequent National Stage proceedings. Moreover, the alleged different inventions do share a single or corresponding special technical feature or inventive concept over the known art, namely the identification of KCS2, both the nucleic acid sequence (SEQ ID NO: 1) and the amino acid encoded thereby. The Examiner has not identified a reference that anticipates this feature of claim 1 or any of the other claims; similarly, no such reference was identified during the International Stage of this application, as evidenced by the prior finding of Unity. It therefore would be inappropriate to divide the claims into multiple groups under the Unity of Invention standard, because all of the alleged Groups share a special technical feature (the within the meaning of PCT Rule 13.2).

In addition, at least Groups I, II, III, and V should be recombined. Each of these Groups are drawn to nucleic acids of or highly homologous to KCS2, either encoding sequences (Group I), promoter sequences (Group II), probes (Group III), or antisense sequences (Group V). The sequence of KCS2 is provided in SEQ ID NO: 1 and Figure 1, which include both the encoding sequence and the promoter (as discussed for instance at page 5, lines 27-30, of the specification). Applicants contend that there would therefore be no undue burden on the Examiner to include all

of these alleged Groups in a single search, since a single search could be used to identify relevant references.

In view of these arguments, reconsideration and withdrawal or modification of the rejection is respectfully requested.

CONCLUSION

It is respectfully submitted that the present applications is in condition for substantive examination. If it may further prosecution, the Examiner is respectfully invited to call their undersigned representative at the telephone number listed below.

Respectfully submitted,

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